IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CIVIL REVISION No.508 of 2005
Date of Decision : 16.07.2007

Prem Chand .....Petitioner
versus
Santu and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.Vikas Mohan Gupta, Advocate for the petitioner.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The challenge in the present revision petition is to the order passed by the learned trial Court, dated 4.12.2004 whereby an application filed by the plaintiff-petitioner for permission to lead additional evidence, was dismissed.

The plaintiff-petitioner filed a suit for permanent injunction restraining the defendants from forcibly raising new constructions, changing the nature of or forcibly occupying or alienating any specific portion of the land and a suit for mandatory injunction for the removal of the Tin Shed constructed by the defendants illegally and forcibly during the pendency of the suit. The issues framed include the issue whether the defendants have raised construction on the said land during the pendency of the suit and whether the plaintiff is entitled to mandatory injunction, as prayed for?

The plaintiff moved an application on 20.5.2004 for permission to lead additional evidence pointing out that the defendants have raised boundary wall on the Eastern and Southern side of new constructions upto

and adjoining the Southern phirni and that the defendants have also demolished the verandah which existed in the middle portion adjoining the Southern garage. The said application was declined by the learned trial Court primarily for the reason that the suit is for permanent injunction and if any construction is raised, that is in violation of the interim orders passed by the Court, therefore, the plaintiff can very well file a contempt petition, but the additional evidence cannot be permitted to be led in the present case as the said fact is beyond the pleadings.

Once issues have been framed regarding constructions allegedly raised by the defendants during the pendency of the suit, the plaintiff can very well lead evidence in support of the allegations that such construction has been raised during the pendency of the suit. Absence of pleadings is immaterial as issue stands framed. If the plaintiff is able to prove that the construction has been raised during the pendency of the suit, the trial Court is competent to mould the relief to advance the cause of justice. Therefore, the order passed by the learned trial Court dated 4.12.2004, suffers from patent illegality and irregularity.

Consequently, the present revision petition is allowed. The order dated 4.12.2004, passed by the learned trial Court is set-aside. The plaintiff-petitioner is permitted to lead additional evidence as sought.

16-07-2007 (HEMANT GUPTA)
*mohinder JUDGE